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December 28, 2020

**FILED VIA ECF**

The Honorable Hildy Bowbeer  
Magistrate Judge, District of Minnesota  
United States District Court  
316 N. Robert Street  
St. Paul, MN 55101

Re: In Re Pork Antitrust Litigation (0:18-cv-01776-JRT-HB); *Winn-Dixie Stores, Inc. v. Agri Stats, Inc.*, Case No. 19-cv-1578 (JRT/HB); *Commonwealth of Puerto Rico v. Agri Stats, Inc.*, Case No. 19-cv-02723 (JRT/HB)

Dear Judge Bowbeer:

Plaintiffs object to the supplemental letter regarding the Rule 16 conference filed by Defendants on December 23, 2020. (ECF No. 614.) Plaintiffs were not aware of any order or other directive from the Court permitting the supplemental letter. In response to Plaintiffs' inquiry, Defendants informed Plaintiffs on December 24, 2020 that they had unilaterally contacted the Court to seek permission to file the supplemental letter. Defendants failed to advise Plaintiffs of their intent to contact the Court or otherwise confer with Plaintiffs prior to filing the supplemental letter.

For the reasons set forth in the status report (ECF No. 569) and during the December 18, 2020 Rule 16 conference, Plaintiffs' proposal to file class certification before the close of fact discovery is consistent with Federal Rule of Civil Procedure 23(c)(1)(A), which provides that class certification should be filed at "early practicable time after a person sues or is sued as a class representative." At class certification "[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013).

There is no authority requiring a motion for class certification to be filed after the close of fact discovery, and there are numerous examples of antitrust class actions in which class certification was filed prior to the close of fact discovery. (*See* Exhibits A-E.) Notably, the examples submitted by Defendants in their supplemental letter do not appear to be antitrust

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class actions, and do not support delaying the filing of class certification until the close of fact discovery *in this case*.

Defendants' claim, that class certification *Daubert* challenges must be filed after all fact discovery and class certification briefing, is also without precedent. At class certification, the Eighth Circuit Court of Appeal has adopted a "focused *Daubert* analysis which scrutinized the reliability of the expert testimony in light of the criteria for class certification and the current state of the evidence." *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 614 (8th Cir. 2011). There is no "tactical advantage" to permitting Plaintiffs and their experts to respond to any attacks on their qualifications and methodologies. Plaintiffs' proposed case management schedule provides Defendants with an opportunity file a reply in support of their class certification *Daubert* motions to address any arguments presented by Plaintiffs and their experts. Defendants will also have an opportunity to file their full *Daubert* challenges to Plaintiffs' merits experts after the Court has ruled on any class certification motions.

Plaintiffs respectfully submit that their proposed case management schedule properly balances the class certification and merits phases of this case in a manner that is consistent with the law, provides a realistic deadline for the completion of fact discovery, and does not result in undue delay.

Very truly yours,

PEARSON, SIMON & WARSHAW, LLP

/s/ Bobby Pouya

BOBBY POUYA

cc: All Counsel Via ECF

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

*IN RE BROILER CHICKEN ANTITRUST  
LITIGATION*

This Document Relates To: All Actions

Case No. 1:16-cv-08637

~~PROPOSED~~ SCHEDULING ORDER  
NO. 14



This Scheduling Order No. 14 supersedes the Court's previous Scheduling Order No. 2 (ECF Dkt. 574) issued on December 15, 2017, Scheduling Order No. 6 issued on September 13, 2018 (ECF Dkt. 1230), Scheduling Order No. 12 issued on July 15, 2019 (ECF Dkt. No. 2322), and Scheduling Order No. 13 issued on January 29, 2020 (ECF Dkt. No. 3420). The parties are directed to the separate Search Methodology Order (ECF Dkt. 586) for any additional deadlines relating to the search of electronically stored information. Additionally, the Court orders that the requirement of Fed. R. Civ. P. 45(a)(4) for notice to other parties before service of a subpoena shall be 4 business days after the day notice and a copy of the subpoena are provided, which shall be computed pursuant to Fed. R. Civ. P. 6(a)(1).

A party receiving objections or productions from a third party in response to a Rule 45 subpoena will serve a copy of those objections or documents on other parties within 7 days, unless otherwise agreed. A party that receives a non-Bates numbered production (or production without a load file) from a third party in response to a Rule 45 subpoena shall serve those documents on other parties within 10 days, unless otherwise agreed by the parties. A party receiving a production from a third party in response to a Rule 45 subpoena that includes information relating to a deposition scheduled within 7 days must notify all parties within 48 hours of receipt.

<u>Event</u>	<u>Deadline</u>
<b>Filing of Class Plaintiffs' Motions for Class Certification &amp; Expert Reports</b>	October 30, 2020
<b>Filing of Defendants' Responses on Class Certification and Class Expert Reports</b> <b>Filing of Defendants' <i>Daubert</i> Motions on Class Plaintiffs' Class Certification Experts</b>	January 22, 2021
<b>Filing of Class Plaintiffs' Reply Briefs on Class Certification and Rebuttal Expert Reports</b> <b>Filing of Class Plaintiffs' Opposition to Defendants' <i>Daubert</i> Motions</b> <b>Filing of Class Plaintiffs' <i>Daubert</i> Motions on Defendants' Class Certification Expert(s)</b>	March 15, 2021
<b>Parties to identify initial set of documents requiring Meet and Confer per order at Dkt. 3727<sup>1</sup></b>	April 12, 2021 <sup>2</sup>
<b>Filing of Defendants' Reply in Support of <i>Daubert</i> Motions Against Class Plaintiffs' Class Certification Expert(s)</b>	April 22, 2021
<b>Filing of Defendants' Opposition to Class Plaintiffs' <i>Daubert</i> Motions on Defendants' Class Certification Experts(s)</b>	April 22, 2021

<sup>1</sup> None of the provisions herein related to the exchange of documents and for a meet and confer process per Dkt. 3727 are intended to moot the Court's directives, also in Dkt. 3727, for the parties to continue to try and reach agreement on the authenticity and admissibility of certain documents or categories of documents.

<sup>2</sup> It is understood that all Parties will make a good faith effort to identify by April 12, 2021, all documents which they have identified as requiring Meet and Confer per order at Dkt. 3727, and that the June 18 deadline is intended to be a much smaller supplemental list.



<u>Event</u>	<u>Deadline</u>
<b>Filing of Class Plaintiffs' Reply in Support of <i>Daubert</i> Motions on Defendants' Class Certification Experts(s)</b>	May 6, 2021 <sup>3</sup>
<b>Deadline to conclude Meet and Confer regarding initial set of documents per Dkt. 3727</b>	June 4, 2021
<b>Deadline to Complete All Merits Fact Discovery<sup>4</sup></b>	June 11, 2021
<b>Parties to identify supplemental documents for Meet and Confer per Dkt. 3727</b>	June 18, 2021
<b>Plaintiffs' Affirmative Merits Expert Reports Due</b>	July 2, 2021
<b>Deadline to conclude Meet and Confer regarding supplemental set of documents per Dkt. 3727</b>	July 14, 2021
<b>Joint Submission on any additional discovery requested per Dkt. 3727</b>	July 21, 2021
<b>Deadline to Depose Plaintiffs' Merits Experts</b>	July 30, 2021
<b>Defendants' Affirmative &amp; Rebuttal Merits Expert Reports Due</b>	August 27, 2021

<sup>3</sup> The Court understands that Defendants intend to ask for an evidentiary hearing on the class certification motion. If such a hearing is set, it will be set on a date to be determined.

<sup>4</sup> The United States Department of Justice ("DOJ") has objected to some depositions proceeding due to its pending criminal prosecution and additional investigation. Rather than delaying the forward progress of the case, sixty days before the close of the fact discovery, Plaintiffs (1) shall advise the Court of the depositions they wish to take to which the DOJ is still objecting and (2) may petition the Court for appropriate relief to minimize prejudice to Plaintiffs. The parties will work in good faith to resolve any disputes in this regard without Court intervention.

<u>Event</u>	<u>Deadline</u>
<b>Deadline to Depose Defendants' Merits Experts</b>	September 24, 2021
<b>Plaintiffs' Rebuttal Merits Expert Reports Due</b>	October 22, 2021
<b>Deadline to Depose Plaintiffs' Rebuttal Merits Experts</b>	November 5, 2021
<b>Summary Judgment Opening Briefs &amp; Merits <i>Daubert</i> Motions Filed<sup>5</sup></b>	November 16, 2021
<b>Summary Judgment Responses &amp; Merits Expert <i>Daubert</i> Responses Filed</b>	January 18, 2022
<b>Summary Judgment Replies &amp; Merits Expert <i>Daubert</i> Replies Filed</b>	February 22, 2022
<b>First Trial Commences<sup>6</sup></b>	October 17, 2022

**SO ORDERED.**

Dated: 8/28/20

  
HON. JEFFREY T. GILBERT  
U.S. MAGISTRATE JUDGE

<sup>5</sup> Pre-summary judgment motion conference with Judge Durkin to be set on a date to be determined.

<sup>6</sup> The Court will decide the number, sequence and timing of trials at a later date.

# EXHIBIT B



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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J THOMPSON, et al., Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

1-800 CONTACTS, INC., et al.,

Defendants.

**STIPULATED THIRD AMENDED  
SCHEDULING ORDER**

Case No. 2:16-cv-01183-TC-DBP

Honorable District Judge Tena Campbell

Honorable Magistrate Judge Dustin Pead

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This Court, having reviewed the parties' Stipulated Motion (ECF No. 261), hereby enters this amended scheduling order:

Event	Current Deadline	New Deadline
Deadline to file motion for class certification and accompanying expert	November 14, 2019	December 19, 2019
Deadline for defendants to file their response to plaintiffs' motion for class certification and accompanying	February 4, 2020	March 10, 2020
Deadline for propounding written fact discovery	March 23, 2020	April 27, 2020
Deadline for plaintiffs to file their reply in support of class certification and rebuttal	March 27, 2020	May 1, 2020
Deadline for supplementing discovery responses under Rule 26(e)	April 3, 2020	May 8, 2020
Fact discovery cut-off	June 4, 2020	July 9, 2020
Plaintiffs' initial expert reports due	June 4, 2020	July 9, 2020
Defendants' expert rebuttal reports due	August 4, 2020	September 8, 2020
Plaintiffs' reply reports due	September 25, 2020	October 30, 2020
Deadline for supplementation of disclosures under Rule 26(a)(3)	Unchanged*	Unchanged
Expert discovery cut-off	November 4, 2020	December 9, 2020
Deadline for filing dispositive motion(s)	December 4 2020	January 8, 2021
Deadline for response to dispositive motion(s)	February 4, 2021	March 11, 2021
Deadline for reply in support of dispositive	March 18, 2021	April 22, 2021
Joint pre-trial order	TBD	TBD
Trial date	TBD	TBD

\*Two business days before expert deposition.

IT IS SO ORDERED.

DATED: September 23rd, 2019

  
DUSTIN B. PEAD  
UNITED STATES MAGISTRATE JUDGE

# EXHIBIT C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD  
PRODUCTS ANTITRUST LITIGATION

Case No.: 15-MD-2670 JLS (MDD)

**ORDER GRANTING JOINT  
SCHEDULING PROPOSAL**  
(ECF No. 876)

All Parties have proposed a scheduling order for future proceedings, (ECF No. 876). The Court **ADOPTS** the proposed scheduling order.<sup>1</sup> The schedule is as follows:

1. By **May 29, 2018**, Plaintiffs shall file and serve any motions for class certification and expert reports and backup data in support of such motions. Plaintiffs shall make such experts available for deposition.

2. By **October 2, 2018**, Defendants shall file and serve any oppositions to motions for class certification and expert reports and backup data in support of such motions. Defendants shall make such experts available for deposition.

3. By **November 13, 2018**, Plaintiffs shall file and serve replies to any oppositions to motions for class certification.

4. Plaintiffs' motions for class certification shall be heard on or about **December 20, 2018 at 9:00 a.m.**

5. By **November 27, 2018**, the Parties shall complete fact discovery.

6. By **January 22, 2019**, Plaintiffs shall serve any initial expert reports.

<sup>1</sup> Accordingly, the Court **DENIES AS MOOT** the previous proposed scheduling order, (ECF No. 871), which has been superseded by the present proposal.

1 7. Plaintiffs' experts must be made available for deposition no later than **February**  
2 **19, 2019**.

3 8. By **April 2, 2019**, Defendants shall serve any opposition expert reports.

4 9. Defendants' experts must be made available for deposition no later than **April 30,**  
5 **2019**.

6 10. By **June 25, 2019**, Plaintiffs shall serve any rebuttal expert reports.

7 11. Plaintiffs' experts must be made available for deposition on any rebuttal report  
8 no later than **July 23, 2019**.

9 12. By **August 20, 2019**, the Parties shall file and serve any dispositive motions.

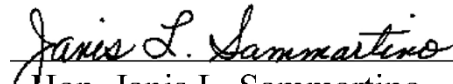
10 13. By **October 8, 2019**, the Parties shall file and serve any opposition(s) to  
11 dispositive motion(s).

12 14. By **November 12, 2019**, any Party having filed and served a dispositive motion  
13 shall file and serve any reply to opposition(s).

14 15. The Parties' dispositive motions shall be heard on **December 19, 2019 at 9:00**  
15 **a.m.**

16 **IT IS SO ORDERED.**

17 Dated: March 19, 2018

  
Hon. Janis L. Sammartino  
United States District Judge



# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KLEEN PRODUCTS LLC, *et al.*,  
individually and on behalf of  
all those similarly situated,

Plaintiffs,

v.

PACKAGING CORPORATION OF  
AMERICA, *et al.*,

Defendants.

No. 10 C 5711

Hon. Harry D. Leinenweber

THIRD AMENDED SCHEDULING ORDER

It is hereby ORDERED that the following Schedule shall govern further proceedings in this case.

1. Plaintiffs shall file their motion for class certification and supporting materials and shall disclose their class certification experts, including expert reports and supporting materials, by June 11, 2014.
2. Depositions of Plaintiffs' class certification experts shall be taken by July 30, 2014.
3. Defendants shall file their opposition to Plaintiffs' motion for class certification and shall disclose their class certification experts, including expert reports and supporting materials, by September 19, 2014.
4. Depositions of Defendants' class certification experts shall be taken by October 31, 2014.
5. Plaintiffs' reply in support of their motion for class certification shall be filed by December 19, 2014.
6. All fact discovery shall be completed by December 1, 2014.

7. Plaintiffs shall disclose their merits experts' opinions and required supporting material by February 4, 2015 and produce their experts for depositions within 60 days thereafter.
8. Defendants shall disclose their merits experts' opinions and required supporting material by May 4, 2015 and produce their experts for depositions within 60 days thereafter.
9. All dispositive motions shall be filed by September 1, 2015; all opposition briefs shall be filed by November 2, 2015; all reply briefs shall be filed by December 17, 2015.
10. The case will be ready for trial by May 2, 2016.
11. The modifications to the pre-existing schedule are being made for the reasons set forth in the stipulation by the parties, and no party shall be entitled to argue that any of the modifications, or any delay they may cause in a ruling on class certification, shall be the basis of a future extension of the schedule. No further extensions of this schedule shall be granted absent good cause.

**SO ORDERED.**

Dated: September 3, 2014



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HARRY D. LEINENWEBER  
United States District Judge

# EXHIBIT E

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge if Other than Assigned Judge	
<b>CASE NUMBER</b>	08 C 7082	<b>DATE</b>	1/14/2011
<b>CASE TITLE</b>	In Re: Text Messaging Antitrust Litigation		

## DOCKET ENTRY TEXT

PRETRIAL ORDER NO. 43: Scheduling conference held. The Court establishes the following schedule: Rule 26(a)(1) disclosures due 2/21/11; deadline for amending the pleadings and adding parties 8/30/11; class certification motion due 12/20/11, response due 2/21/12, reply 4/10/12; fact discovery to be completed by 6/29/12; Rule 26(a)(2) disclosures regarding trial/merits experts due 7/30/12 for plaintiffs, 9/24/12 for defendants, and 11/12/12 for plaintiffs' rebuttal; trial/merits expert discovery to be completed by 11/30/12; dispositive motion deadline 12/21/12. Further deadlines are set forth below.

■ [ For further details see text below.]

Docketing to mail notices.

## STATEMENT

The following additional deadlines are set:

1/24/11: discovery commences; deadline for motions for entry of orders on governing discovery (document preservation, expert materials, confidentiality)

2/7/11: deadline for completion of production of documents produced by defendants in connection with DOJ and Senate investigations

12/21/11: deadline for plaintiffs' Rule 26(a)(2) disclosures concerning class certification

2/3/12: deadline for deposition of plaintiffs' class certification experts

2/22/12: deadline for defendants' Rule 26(a)(2) disclosures concerning class certification

3/23/12: deadline for deposition of defendants' class certification experts

4/11/12: deadline for plaintiffs' rebuttal Rule 26(a)(2) disclosures concerning class certification

9/10/12: deadline for deposition of plaintiffs' trial/merits experts

11/5/12: deadline for deposition of defendants' trial/merits experts

Courtroom Deputy  
Initials:

mk